

A.B., Appellant

**U.S. POSTAL SERVICE, COLESVILLE POST
OFFICE, Silver Spring, MD, Employer**

Appearances:

Stephen Larkin, for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

Before:

JURISDICTION

On November 11, 2020 appellant, through her representative, filed a timely appeal from an August 25, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 15, 2020, as she no longer had disability or residuals causally related to her accepted January 8, 2018 employment injury; and (2) whether appellant has met her burden of proof to establish continuing disability or residuals on or after January 15, 2020 due to the accepted January 8, 2018 employment injury.

FACTUAL HISTORY

On January 8, 2018 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she suffered a right knee injury when she slipped and fell on an icy walkway while delivering a package in the performance of duty. She initially stopped work on January 9, 2018.

On March 22, 2018 OWCP accepted the claim for lateral meniscus tear of the right knee, right knee contusion, and right knee sprain. Appellant underwent OWCP-authorized right knee arthroscopy with partial lateral meniscectomy, debridement of chondromalacia, and removal of loose body on May 4, 2018. She stopped work on that date and did not return. OWCP paid appellant wage-loss compensation on the supplemental rolls from May 12 through October 13, 2018 and on the periodic rolls, commencing October 14, 2018.

In a December 28, 2018 report, Dr. James York, a Board-certified orthopedic surgeon, noted that appellant experienced continued right knee pain following her right knee surgery. He examined appellant and diagnosed left knee articular cartilage damage and meniscal tear, aggravation of lumbar spondylosis, strain and tearing of the pelvis, aggravation of left hip osteoarthritis, and strain and tearing of the left thigh. Dr. York recommended physical therapy treatment and advised that appellant could not work for three months.

On February 4, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. Rafael Steuart, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature of her accepted conditions, the extent of disability, and appropriate medical treatment.

In a February 27, 2019 report, Dr. Steuart noted his review of the SOAF and appellant's medical record. He examined appellant and opined that her right knee discomfort related to her preexisting degenerative joint disease. Dr. Steuart further opined that appellant's work-related conditions had resolved and indicated that she could resume full-duty work as a letter carrier.

In an April 18, 2019 report, Dr. York opined that appellant's employment injury aggravated her underlying hip arthritis and lumbar spondylosis. He found that the mechanism of slipping and falling "result[ed] in an injury force of 2,500 N[ewtons]" which caused trauma to the component parts of her knees, hips, pelvis, and lumbar spine. Dr. York noted that appellant's preexisting arthritis, chondromalacia, and lumbar spondylosis were asymptomatic and that the employment injury significantly aggravated these conditions. He indicated that appellant had no thigh, pelvis, back, hip, or knee symptoms prior to the employment injury. Dr. York opined that appellant suffered permanent aggravation of her underlying conditions and that she was not able to return to work in any capacity.

In a June 6, 2019 supplemental report, Dr. Steuart reviewed reports from Dr. York. He again opined that no other medical diagnoses were causally related to the employment injury other than those that were previously accepted. Dr. Steuart advised that appellant could return to full-duty work as she had a normal physical examination without any objective clinical findings.

On July 11, 2019 OWCP referred appellant, an updated SOAF, and a series of questions to Dr. Robert M. Saltzman, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict of medical opinion evidence between Dr. York, appellant's treating physician, and Dr. Steuart, OWCP's referral physician.

In an August 12, 2019 report, Dr. Eric Dawson, an orthopedic surgeon, noted appellant's history of injury and provided physical examination findings and diagnosed left knee tears, insertional tendinitis, adductor muscle tear, left hip tear, and lumbar nerve impingement. Dr. Dawson noted that there was no evidence of previous injuries and opined that the employment injury caused appellant's conditions. He recommended electromyography (EMG) and nerve conduction velocity (NCV) studies.

In a report, dated August 16, 2019, Dr. Saltzman reviewed the medical record and SOAF. He examined appellant and found that her range of motion (ROM) in the right knee was from 10 to 100 degrees. Dr. Saltzman opined that appellant's right knee symptoms were related to her underlying degenerative joint disease. He noted that she had a temporary aggravation of right knee degenerative joint disease with degenerative lateral meniscus tear, which was treated by arthroscopic partial lateral meniscectomy. Dr. Saltzman agreed with Dr. Steuart's assessment that appellant's current symptoms were related to her preexisting conditions. He indicated that her magnetic resonance imaging (MRI) scan findings appeared to show degenerative conditions and not acute abnormalities. Dr. Saltzman further noted that appellant's x-ray findings showed underlying hip arthritis prior to the employment injury. He advised that appellant was unable to resume work as a letter carrier due to her preexisting osteoarthritis. Dr. Saltzman noted that she could only work in a light-duty capacity with limited walking, standing, pushing, and pulling.

On September 5, 2019 OWCP requested that Dr. Saltzman provide clarification regarding why appellant's aggravation was temporary and when it resolved. It further requested that he provide medical rationale as to whether appellant's accepted conditions had resolved.

In a September 12, 2019 addendum report, Dr. Saltzman noted that appellant's MRI scan and physical examination findings at the time of her arthroscopic surgery did not show any acute changes. He indicated that her meniscus tear was "more than likely present even prior" to the employment injury. Dr. Saltzman advised that it was not possible to fully determine the difference between the work-related aggravation and the natural course of osteoarthritis. He opined that appellant's aggravation of right knee degenerative joint disease was temporary as she sustained a knee sprain with no new findings. "Without any new specific injury, symptoms would be expected to resolve with time but the arthritis not only remains constant, but worsens with time." He went on to say that a sprain would be expected to heal after six months and any aggravation beyond that time would be related to her underlying tricompartmental osteoarthritis. Dr. Saltzman noted that appellant's lateral meniscus tear resolved with surgical intervention and her right knee contusion resolved with time. He found that appellant's right knee sprain also resolved as she had no ligamentous laxity on physical examination or ligament tears on MRI scan. Dr. Saltzman opined that her current objective findings were expected given her age, weight, and underlying osteoarthritis.

In a September 26, 2019 report, Dr. Dawson noted that appellant had continued pain, spasm, stiffness, discomfort, numbness, tingling, burning, and weakness to the back, ankles, and knees. He provided physical examination findings and diagnosed lumbar discopathy with nerve impingement, intraarticular pathology to the right knee, and ankle sprain.

On October 17, 2019 OWCP expanded the acceptance of appellant's claim to include resolved temporary aggravation of tricompartmental osteoarthritis of the right knee.

On October 18, 2019 OWCP issued a notice proposing to terminate her wage-loss compensation and medical benefits based on Dr. Saltzman's opinion that the January 8, 2018 accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

OWCP subsequently received an October 16, 2019 report from Dr. York who provided physical examination findings and diagnosed right chondromalacia and right knee primary osteoarthritis. In an accompanying duty status report (Form CA-17), Dr. York advised that appellant could not resume work.

In an October 25, 2019 report, Dr. Dawson provided physical examination findings. He noted that appellant had enthesopathy to the right knee and indicated that her employment duties contributed to her knee conditions. Dr. Dawson refuted Dr. Saltzman's assessment that appellant's conditions were due to degenerative changes. He opined that the employment injury stretched appellant's medial components and compressed her lateral components. Dr. Dawson noted that her femoral condyle hammered her lateral tibial eminence and plateau with her lateral meniscus cartilage caught in between. He advised that appellant's symptoms were due to this mechanism of injury. Dr. Dawson further indicated that Dr. Saltzman failed to adequately measure appellant's ROM or describe which ligaments of the knee were tested. He noted that appellant performed full-duty work without restrictions prior to the employment injury. Dr. Dawson asserted that appellant had pain, swelling, and stiffness, which was not considered by Dr. Saltzman.

By decision dated January 15, 2020, OWCP finalized the proposed termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the medical evidence submitted was insufficient to outweigh Dr. Saltzman's opinion, with whom the special weight of the medical evidence rested.

On January 22, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a February 5, 2020 report, Dr. York examined appellant and diagnosed right knee chondromalacia, right knee osteoarthritis, left knee arthritis, right knee lateral meniscus tear, and right knee injury. In an accompanying CA-17 report, he advised that appellant could resume limited-duty work with restrictions.

A telephonic hearing was held on June 10, 2020. Appellant testified that she returned to work on January 16, 2020.

In a June 22, 2020 report, Dr. Dawson noted that appellant had no significant preexisting arthritic condition or other major medical condition that would affect her knees prior to the employment injury. He reiterated that the employment injury was sufficient to cause a sprain, strain, or even tear to the nerves of the intraarticular structures. Dr. Dawson indicated that

appellant demonstrated a loss of ROM and atrophic changes on examination. He opined that appellant's conditions were not simply due to aging and were traumatic in nature. Dr. Dawson noted that meniscal surgery caused loss of long-term stability in her right knee. He opined that the employment injury caused a permanent aggravation of appellant's osteoarthritis.

By decision dated August 25, 2020, OWCP's hearing representative affirmed the January 15, 2020 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.⁴ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁹ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹⁰

⁴ *R.H.*, Docket No. 19-1604 (issued October 9, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *E.K.*, Docket No. 18-0835 (issued September 23, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018); *Del K. Rykert*, 40 ECAB 294-96 (1988).

⁷ *M.P.*, Docket No. 20-0024 (issued September 1, 2020); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *D.B.*, Docket No. 19-0663 (issued August 27, 2020); *R.P.*, Docket No. 18-0900 (issued February 5, 2019); *Calvin S. Mays*, 39 ECAB 993 (1988).

⁹ 5 U.S.C. § 8123(a); *V.S.*, Docket No. 19-1792 (issued August 4, 2020); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

¹⁰ *D.B.*, *supra* note 8; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 15, 2020.

Appellant's attending physician, Dr. York opined that appellant was totally disabled from work and had ongoing residuals related to the accepted employment injury. OWCP referred appellant for a second opinion evaluation with Dr. Steuart who opined that appellant's work-related conditions had resolved and indicated that she could resume full-duty work as a letter carrier. In order to resolve the conflict, OWCP properly referred appellant for an impartial medical examination with Dr. Saltzman, pursuant to 5 U.S.C. § 8123(a).¹¹

In a September 12, 2019 supplemental report, Dr. Saltzman noted that appellant's meniscus tear was likely present prior to the employment injury. He advised that it was not possible to fully determine the difference between the work-related aggravation and the natural course of osteoarthritis. Dr. Saltzman opined that appellant's aggravation of right knee degenerative joint disease was temporary, pointing out that appellant had sustained a knee sprain without any findings and that "Without any new specific injury, symptoms would be expected to resolve with time but the arthritis not only remains constant, but worsens with time." He further pointed out that a sprain would be expected to resolve after six months and that any aggravation beyond six months would be related to her underlying tricompartmental osteoarthritis. Dr. Saltzman noted that appellant's lateral meniscus tear resolved with surgical intervention and her right knee contusion resolved with time. He found that appellant's right knee sprain also resolved as she had no ligamentous laxity on physical examination or ligament tears on MRI scan.

The Board finds that Dr. Saltzman's opinion was conclusory in nature and did not contain sufficient medical reasoning to establish that appellant was no longer disabled due to her accepted January 8, 2018 employment injury.¹² The factors that determine the probative value of medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issues addressed to him by OWCP.¹³

Dr. Saltzman opined that appellant's accepted conditions had resolved. However, he failed to provide a well-rationalized opinion explaining how or whether the accepted January 8, 2018 employment injury contributed, in any way, to the preexisting, degenerative conditions that were diagnosed. The Board has explained that medical rationale is particularly necessary if appellant has a preexisting condition.¹⁴ Dr. Saltzman merely provided a conclusory statement that any aggravation beyond six months would be related to appellant's underlying tricompartmental osteoarthritis. He provided no discussion on the opinions of Drs. York and Dawson that appellant

¹¹ 5 U.S.C. § 8123(a).

¹² See *P.J.*, Docket No. 20-0550 (issued April 26, 2021); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.B.*, Docket No. 18-0700 (issued January 9, 2019); *S.J.*, Docket No. 17-0543 (issued August 1, 2017).

¹³ See *R.K.*, Docket No. 19-1980 (issued May 7, 2020); *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *James T. Johnson*, 39 ECAB 1252 (1988).

¹⁴ *E.K.*, *supra* note 6.

suffered a permanent aggravation of her underlying osteoarthritis. Furthermore, Dr. Saltzman advised that it was not possible to fully determine the difference between the work-related aggravation and the natural course of osteoarthritis. The Board has held that a medical opinion which is equivocal in nature is of limited probative value regarding a given medical question.¹⁵ Accordingly, Dr. Saltzman's conclusory, equivocal opinion is insufficient to meet OWCP's burden of proof to terminate her wage-loss compensation and medical benefits.

The Board therefore finds that Dr. Saltzman's reports are, therefore, not entitled to special weight and are insufficient to meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 15, 2020.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective January 15, 2020.¹⁶

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 10, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ See *J.C.*, Docket No. 20-0973 (issued February 9, 2021); *E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

¹⁶ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.